



EMPLOYMENT TRIBUNALS

BETWEEN

Claimant

Miss Amanda Dunn

AND

Respondent

Devizes Plumbing and Heating Limited

JUDGMENT OF THE EMPLOYMENT TRIBUNAL

HELD REMOTELY

ON

14, 15 and 16 February 2022

BY VIDEO HEARING SERVICE and CONFERENCE TELEPHONE

EMPLOYMENT JUDGE N J Roper

MEMBERS: Ms L B Simmonds
Ms J Kaye

Representation

For the Claimant: In person

For the Respondent: Mr C Smart, Director

JUDGMENT

The unanimous judgment of the tribunal is that:

1. The claimant was unfairly dismissed; and
2. The respondent is ordered to pay the claimant compensation for unfair dismissal in the sum of £15,003.60; and
3. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 ("the Recoupment Regulations") apply in this case, and the Grand Total is £15,003.60; the Prescribed Element is £9,648.88; the Period of the Prescribed Element is from dismissal on 6 May 2020 to 31 December 2020; and the excess of the Grand Total over the Prescribed Element is £5,354.72; and
4. The claimant succeeds in her claim for breach of contract and the respondent is ordered to pay the claimant the net sum of £1,201.35; and
5. The respondent failed to issue the claimant with a written statement of the terms of her employment and is ordered to pay the claimant two weeks' pay in the sum of £824.00; and
6. The claimant's claim for disability discrimination by association is dismissed; and
7. The claimant's claim for accrued but unpaid holiday pay is dismissed; and
8. The claimant is not entitled to a statutory redundancy payment.

RESERVED REASONS

1. In this case the claimant Miss Amanda Dunn claims that she has been unfairly dismissed (both generally and “automatically”); that she has suffered associated disability discrimination; and she also brings other claims of breach of contract for her notice pay, for accrued holiday pay, and for entitlement to a statutory redundancy payment. The respondent contends that the reason for the dismissal was misconduct, that the dismissal was fair, and denies the remaining claims.
2. This has been a remote hearing on the papers which has been consented to by the parties. The form of remote hearing was by Video Hearing Service, and by Telephone Conference Call.
3. We have heard from the claimant, and we have heard from Mr Christopher Smart who is a Director of the respondent company on behalf of the respondent. We were also asked to consider a statement from Mr Alan Payne on behalf of the claimant, but we can only attach limited weight to this because he was not present at the hearing to be questioned on this evidence.
4. There was a degree of conflict on the evidence. We have heard the witnesses give their evidence and have observed their demeanour in the witness box. We found the following facts proven on the balance of probabilities after considering the whole of the evidence, both oral and documentary, and after listening to the factual and legal submissions made by and on behalf of the respective parties.
5. The Facts:
6. As its name suggests, the respondent is a plumbing and heating company which is based in Devizes in Wiltshire. It is a small employer. The claimant Miss Amanda Dunn was employed by the respondent as its Office Administrator. She worked on average 40 hours each week and her duties included answering the telephone, completing job sheets, and general office duties. She commenced employment on 9 January 2017 and was dismissed by letter dated 2 May 2020, which she received on 6 May 2020. The claimant was not issued with a written statement of the terms and conditions of her employment.
7. The claimant cares for her elderly mother who is now 86 years old. She suffers from heart disease, kidney disease, and arthritis. She is barely able to walk and uses a stair lift. She has suffered from these conditions for many years.
8. The events which gave rise to the claimant’s dismissal were contemporaneous with the onset of the Covid-19 pandemic in early 2020. On 22 March 2020 the claimant sent Mr Richard Smart of the respondent a text message in connection with the potential Government “Lockdown”, to ask “what’s the situation for work after the government talks Friday and weekend”? He replied to the effect: “Hi Mandy yes the government’s said close pubs and restaurants but we’re not a pub and restaurant we are a heating company and it is essential and mostly you’re on your own in the shop Mandy and self isolated” On the evening of 23 March 2020 the Government announced a national lockdown. However, that did not apply to heating and plumbing engineers such as the respondent because the servicing of heating equipment and emergency repairs were deemed to be essential businesses which should remain open.
9. On 23 March 2020 the parties exchanged text messages, and on 24 March 2020 the claimant spoke to Mr Christopher Smart of the respondent by telephone. Given that the Government were encouraging people to stay at home, she expressed her concern about her situation, and offered to do the necessary administrative work from home. The claimant then asserts that Mr Smart informed her of his intention to close the office because their work would “go dead”. Mr Smart disputes this because the company was still trading. It seems that little then happened except an exchange of text messages between the parties in particular with staff payroll and tax issues which still needed resolving. On 30 March 2020 the claimant and Mr Christopher Smart discussed these tax and pay details, and also the possibility of the Government’s retention/furlough scheme.
10. By letter dated 31 March 2020 Mr Christopher Smart then confirmed to the claimant: “After making enquiries as to the job retention scheme or furlough, it has come to our attention

- that we will not meet the criteria for this scheme. Therefore we are not able to provide this to you as we will not be able to recover the cost of the company ... As we are an essential premises covering heating and hot water we are able to continue with our opening of the business and providing services to our customers be it at a somewhat reduced level. I appreciate this is an unprecedented time and worrying for you but as a small business we must all pull together to come through ... As you have decided to absent yourself from work, we will not be able to cover your wages. We are able to give you work in a safe environment in a safe office on your own at present from the hours of 10:30 am to 2:30 pm Monday Tuesday Thursday Friday in which there will be no one in with you. We will review this arrangement on a monthly basis if you would like to return to work. I await your reply so we can arrange to get things organised.”
11. Mr Smart told us at this hearing that the offer of reduced hours was on normal pay without any reduction, although this was not made clear to the claimant at that time.
 12. The claimant then telephoned Mr Smart on 2 April 2020, and Mr Smart confirmed that the respondent would not implement the furlough scheme. The effect of the scheme was effectively that the claimant could stay at home but receive 80% of her normal salary, but the scheme requires the agreement of both employer and employee, and the respondent's view was that it was not entitled to implement the scheme and in any event did not wish to do so. The claimant also asserts that at the end of that conversation she complained that the office was not a safe environment because engineers and staff visited daily and the claimant was concerned about her elderly and vulnerable disabled mother. She felt there was a need to self-isolate, and she had offered to work from home. Mr Smart denies that this conversation took place.
 13. There then seems to have been something of a “stand-off” between the parties. The claimant wished to remain at home, and she had received advice from a friend who was a solicitor to the effect that she should be entitled to the benefits of the furlough scheme. The respondent's view was that the claimant was unreasonably absenting herself from work without authority, and that the respondent was not eligible for the furlough scheme, and in any event, they did not wish to implement it.
 14. It seems that the claimant then tried to pursue the matter some three weeks later on 22 April 2020 but says that she did not receive a reply to a voice mail message. She again pursued this on 4 May 2020, without success. Then on 6 May 2020 she received a letter from Mr Christopher Smart of the respondent dated 2 May 2020 which effectively terminated her employment. This letter read: “I wrote you on 31 March 2020 after you had left your place of work with Devizes plumbing and heating on 24 March which we did not give leave of absence for. I asked you to return to work where you would be in a safe office on your own but you have failed to return after six weeks of absence with no written correspondence, and therefore we no longer have this work position available to yourself.”
 15. The respondent has confirmed that it dismissed the claimant by reason of her misconduct, and that in any event at that time its available work had reduced, and it no longer required the claimant in her full-time capacity. The respondent has also accepted that there was no suspension; no disciplinary hearing; no attempt to establish the claimant's views nor any opportunity given for her to state her case before it reached its decision; and no offer of an appeal against that decision. The claimant was not paid for her statutory minimum period of notice which after three years of employment was three weeks.
 16. We accept the evidence of Mr Smart of the respondent that the reason he decided to terminate the claimant's employment was that he considered her to have committed misconduct by reason of her unauthorised absence from work, and that in any event the respondent's requirements for her to carry out her duties had reduced, in circumstances where he had been unable to implement the furlough scheme, and had perceived that the claimant had refused reduced hours.
 17. For these reasons we reject the claimant's assertion that the respondent dismissed her because of her mother's disability. We also reject the claimant's assertion that the reason (or if more than one the principal reason) for her dismissal was that she had made public interest disclosures and/or that she had raised health and safety concerns.
 18. Having established the above facts, we now apply the law.

19. The Law:
20. The reason relied upon by the respondent for the claimant's dismissal was conduct which is a potentially fair reason for dismissal under section 98 (2) (b) of the Employment Rights Act 1996 ("the Act").
21. We have considered section 98 (4) of the Act which provides "... the determination of the question whether the dismissal is fair or unfair (having regard to the reason shown by the employer) – (a) depends on whether in the circumstances (including the size and administrative resources of the employer's undertaking) the employer acted reasonably or unreasonably in treating it as a sufficient reason for dismissing the employee, and – (b) shall be determined in accordance with equity and the substantial merits of the case".
22. Under section 43A of the Act a protected disclosure is a qualifying disclosure (as defined by section 43B) which is made by a worker in accordance with any of sections 43C to 43H. Section 43B(1) provides that a qualifying disclosure means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show one or more of the following – (a) that a criminal offence has been committed, is being committed or is likely to be committed, (b) that a person has failed, is failing or is likely to fail to comply with any legal obligation to which he is subject, (c) that a miscarriage of justice has occurred, is occurring or is likely to occur, (d) that the health or safety of any individual has been, is being or is likely to be endangered, (e) that the environment has been, is being or is likely to be damaged, or (f) that information tending to show any matter falling within any one of the preceding paragraphs has been, or is likely to be deliberately concealed.
23. Under Section 43C(1) a qualifying disclosure becomes a protected disclosure if it is made in accordance with this section if the worker makes the disclosure – (a) to his employer, or (b) where the worker reasonably believes that the relevant failure relates solely or mainly to – (i) the conduct of a person other than his employer, or (ii) any other matter for which a person other than his employer has legal responsibility, to that other person.
24. Under section 103A of the Act, an employee is to be regarded as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that the employee made a protected disclosure.
25. Under section 100(1) of the Act, an employee who is dismissed shall be regarded as unfairly dismissed if the reason (or, if more than one, the principal reason) for the dismissal is that ... (c) being an employee at a place where - there was no such [health and safety] representative or safety committee ... he brought to his employer's attention, by reasonable means, circumstances connected with his work which he reasonably believed were harmful or potentially harmful to health or safety, (d) in circumstances of danger which the employee reasonably believed to be serious and imminent in which he could not reasonably have been expected to advert, he left (or proposed to leave) or (while the danger persisted) refused to return to his place of work or any dangerous part of his place of work ...
26. This is also a claim alleging associative discrimination because of the claimant's mother's disability under the provisions of the Equality Act 2010 ("the EqA"). The claimant complains that the respondent has contravened a provision of part 5 (work) of the EqA. The claimant alleges direct associative disability discrimination.
27. The protected characteristic relied upon is disability, as set out in section 6 and schedule 1 of the EqA. A person P has a disability if he has a physical or mental impairment that has a substantial and long-term adverse effect on P's ability to carry out normal day to day activities. A substantial adverse effect is one that is more than minor or trivial, and a long-term effect is one that has lasted or is likely to last for at least 12 months, or is likely to last the rest of the life of the person.
28. As for the claim for direct disability discrimination, under section 13(1) of the EqA a person (A) discriminates against another (B) if, because of a protected characteristic, A treats B less favourably than A treats or would treat others.
29. The claimant's claim for breach of contract is permitted by article 3 of the Employment Tribunals Extension of Jurisdiction (England and Wales) Order 1994 and the claim was outstanding on the termination of employment.

30. The claimant also claims in respect of holiday pay for accrued but untaken holiday under the Working Time Regulations 1998 (“the Regulations”).
31. Under section 135 of the Act an employee is entitled to a statutory redundancy payment if he or she is dismissed by reason of redundancy or by reason of being laid-off or kept on short-time.
32. We have also considered section 207A of the Trade Union and Labour Relations (Consolidation) Act 1992, and in particular section 207A(2), (referred to as “s. 207A(2)”) and the ACAS Code of Practice 1 on Disciplinary and Grievance Procedures 2015 (“the ACAS Code”).
33. We have considered the cases of Post Office v Foley, HSBC Bank Plc (formerly Midland Bank plc) v Madden [2000] IRLR 827 CA; British Home Stores Limited v Burchell [1980] ICR 303 EAT; Iceland Frozen Foods Limited v Jones [1982] IRLR 439 EAT; Sainsbury’s Supermarkets Ltd v Hitt [2003] IRLR; Wilson v Racher [1974] ICR 428; Neary v Dean of Westminster [1999] IRLR 288; Taylor v OCS Group Ltd [2006] ICR 1602 CA; Polkey v A E Dayton Services Ltd [1988] ICR 142 HL; Cavendish Munro Professional Risks Management Ltd v Geduld [2010] ICR 325 EAT; Kilraine v London Borough of Wandsworth [2018] EWCA Civ 1436; Fecitt and Ors v NHS Manchester [2012] ICR 372 CA; Blackbay Ventures Limited t/a Chemistree v Gahir UK/EAT/0449/12/JOJ; Igen v Wong [2005] IRLR 258 CA; Madarassy v Nomura International Plc [2007] ICR 867 CA; Nagarajan v London Regional Transport [2000] 1 AC 501; and Coleman v Attridge Law [2008] ICR 1128. The tribunal directs itself in the light of these cases as follows.
34. The Issues:
35. The issues which fall to be determined by this tribunal are limited to those set out in the Case Management Order of Employment Judge Bax dated 14 April 2021. They are each dealt with in turn below.
36. Unfair Dismissal (Misconduct):
37. Applying Iceland Frozen Foods Limited v Jones, the starting point should always be the words of section 98(4) themselves. In applying the section, the tribunal must consider the reasonableness of the employer’s conduct, not simply whether it considers the dismissal to be fair. In judging the reasonableness of the dismissal, the tribunal must not substitute its own decision as to what was the right course to adopt for that of the employer. In many (though not all) cases there is a band of reasonable responses to the employee’s conduct within which one employer might take one view, and another might quite reasonably take another. The function of the tribunal is to determine in the particular circumstances of each case whether the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. If the dismissal falls within the band the dismissal is fair: if the dismissal falls outside the band, it is unfair.
38. The correct approach is to consider together all the circumstances of the case, both substantive and procedural, and reach a conclusion in all the circumstances. Applying British Home Stores Limited v Burchell, a helpful approach in most cases of conduct dismissal is to identify three elements (as to the first of which the burden is on the employer; as to the second and third, the burden is neutral): (i) that the employer did believe the employee to have been guilty of misconduct; (ii) that the employer had in mind reasonable grounds on which to sustain that belief; and (iii) that the employer, at the stage (or any rate the final stage) at which it formed that belief on those grounds, had carried out as much investigation as was reasonable in the circumstances of the case. Applying Sainsbury’s Supermarkets Ltd v Hitt, the band of reasonable responses test applies as much to the question of whether the investigation was reasonable in all the circumstances as it does to the reasonableness of the decision to dismiss.
39. In order to find gross misconduct, the tribunal must be satisfied on the balance of probabilities that there has been wilful conduct by the employee that amounts to a repudiatory breach of the employment contract, permitting the employer to accept that breach and to dismiss the employee summarily, see Wilson v Racher and the decision of Lord Jauncey in Neary v Dean of Westminster.
40. When considering the fairness of a dismissal, the Tribunal must consider the process as a whole Taylor v OCS Group Ltd.

41. We find that the claimant's dismissal was both procedurally and substantively unfair. With regard to the lack of a reasonable or appropriate procedure, the respondent has accepted that there was no suspension; no disciplinary hearing; no attempt to establish the claimant's views nor any opportunity given for her to state her case before it reached its decision; and no offer of an appeal against that decision.
42. In addition, we do not accept that the respondent was entitled to dismiss the claimant summarily by reason of gross misconduct. We are not satisfied on the balance of probabilities that there has been wilful conduct by the claimant that amounts to a repudiatory breach of the employment contract, permitting the respondent to accept that breach and to dismiss the claimant summarily.
43. Although we find that there was something of a "stand-off" between the parties, when the claimant was hoping to benefit from the furlough scheme, and that the claimant could arguably have done more to clarify the position concerning her employment once the respondent made it clear that she was not eligible for furlough, nonetheless the respondent failed to take reasonable steps to explore and potentially resolve the dispute. The respondent might well have been able to have satisfied the claimant's concerns about self-isolation and/or safety in the office; and might have been able to find some system whereby the claimant could work wholly or partly from home, even on reduced hours. It failed to do so. Instead the respondent merely reached the conclusion that the claimant had committed misconduct and should be dismissed summarily in circumstances where there was a reduced need for her employment, when a disciplinary or exploratory meeting could well have resolved their differences.
44. In judging the reasonableness of the dismissal, the tribunal must not substitute its own decision as to what was the right course to adopt for that of the employer. In many (though not all) cases there is a band of reasonable responses to the employee's conduct within which one employer might take one view, and another might quite reasonably take another. The function of the tribunal is to determine in the particular circumstances of each case whether the decision to dismiss the employee fell within the band of reasonable responses which a reasonable employer might have adopted. It is not for the Tribunal to substitute its views for that of the respondent, and we do not do so. Nonetheless we find that the respondent's dismissal of the claimant in these circumstances was not within the band of responses which were reasonably open to the respondent based on these facts at that time.
45. Accordingly, we find that the claimant was unfairly dismissed, and she succeeds in her claim for unfair dismissal. The appropriate remedy is dealt with below.
46. Whistleblowing Automatic Unfair Dismissal:
47. The disclosure relied upon by the claimant is the telephone conversation with Mr Christopher Smart on 2 April 2020; to the effect that the office was not safe because it had not been cleaned properly; and/or that a colleague Kimberley would have to bring her children to the office on Wednesdays.
48. This conversation is disputed by Mr Smart, and the claimant's own evidence does not fully support her assertion. We accept that she may well have raised concerns about whether it was safe to return to the office.
49. The claimant has not satisfied us on the balance of probabilities that she has made a disclosure of information to the respondent to the effect that there was a failure by the respondent to comply with any legal obligation, nor that the health and safety of any individual was being endangered or was likely to be endangered. On the evidence before us we are unable to find that the claimant has made any protected public interest disclosure.
50. In any event we have found that the reason for the claimant's dismissal was perceived misconduct, combined with a potential redundancy situation, and we reject the claimant's assertion that the reason (or of more than one the principal reason) for her dismissal was because she had made protected public interest disclosures, and we dismiss her claim for automatically unfair dismissal for this reason.
51. Health and Safety Automatic Unfair Dismissal:

52. The claimant repeats the assertion above with regard to her conversation with Mr Smart on 2 April 2020 in connection with her claim for automatically unfair dismissal for health and safety reasons. We accept that it was likely that the claimant raised concerns about whether it was safe for her to work in the office, given the fact that her mother was vulnerable, and on balance therefore we accept that the claimant brought to the respondent's attention by reasonable means circumstances connected with her work which she reasonably believed were potentially harmful to health and safety. This satisfies subsection 100(1)(c) of the Act.
53. We do not accept that the second part of the claimant's claim under section 100(1)(d) is satisfied because the claimant has not established on the balance of probabilities that she refused to return to her place of work because of circumstances of danger which she reasonably believed to be serious and imminent.
54. In any event (and even though we have found that subsection 100(1)(c) of the Act is satisfied) we have found that the reason for the claimant's dismissal was perceived misconduct, combined with a potential redundancy situation, and we reject the claimant's assertion that the reason (or of more than one the principal reason) for her dismissal were for the grounds relied upon in section 100(1)(c) or (d). We therefore dismiss the claimant's claim that she was automatically unfairly dismissed for health and safety reasons.
55. Breach of Contract (Notice Pay):
56. The claimant was dismissed without notice in circumstances where the respondent was not entitled to do so. The claimant succeeds in her claim for breach of contract in respect of notice pay. The respondent is ordered to pay the claimant the sum of £1,201.35 as compensation for breach of contract, which consists of three weeks' net pay in the sum of £961.08, and 25% uplift in the sum of £240.27, for which see further below.
57. Disability Discrimination by Association:
58. The claimant's elderly mother suffers from heart disease, kidney disease, and arthritis. She is barely able to walk and uses a stair lift. She has suffered from these conditions for many years. These three impairments are long-term, and they have a substantial adverse effect on her normal day-to-day activities (particular mobility). The respondent has now conceded that she is a disabled person for the purposes of the EqA, and we so find.
59. The claimant asserts that she has suffered direct discrimination pursuant to section 13 EqA because of the protected characteristic of disability, relying by association on her mother's disability. The less favourable treatment complained of is limited to the act of her dismissal. However, we have found that the reason for the claimant's dismissal was perceived misconduct, combined with a potential redundancy situation. We reject her assertion that she was dismissed because her mother was disabled.
60. A claim for direct discrimination will fail unless the claimant has been treated less favourably because of the disability than an actual or hypothetical comparator was or would have been treated in circumstances which are the same or not materially different. The claimant needs to prove some evidential basis upon which it could be said that this comparator would not have been dismissed. In Madarassy v Nomura International Plc Mummery LJ stated: "The Court in Igen v Wong expressly rejected the argument that it was sufficient for the claimant simply to prove facts from which the tribunal could conclude that the respondent "could have" committed an unlawful act of discrimination. The bare facts of a difference in status and a difference in treatment only indicate a possibility of discrimination. They are not, without more, sufficient material from which a tribunal "could conclude" that, on the balance of probabilities, the respondent had committed an act of discrimination". The decision in Igen Ltd and Ors v Wong was also approved by the Supreme Court in Hewage v Grampian Health Board. The Court of Appeal has also confirmed that Igen Ltd and Ors v Wong and Madarassy v Nomura International Plc remain binding authority in both Ayodele v Citylink Ltd [2018] ICR 748 and Royal Mail Group Ltd v Efobi [2019] EWCA Civ 18.
61. The claimant has failed to prove any evidential basis upon which it could be said that she has been dismissed because of her mother's disability, and/or that any chosen comparator would not have been dismissed. Accordingly, we dismiss her claim for direct disability discrimination by association.

62. Entitlement to Statutory Redundancy Payment:
63. At the time of the claimant's dismissal the respondent did have a reduced need for the continued employment of the claimant, but even so the claimant was dismissed by reason of misconduct, and was not dismissed by reason of redundancy or by reason of being laid off or kept on short-time. Accordingly, she is not entitled to a statutory redundancy payment. In any event any potential redundancy payment would be offset by the basic award made below.
64. Accrued but Unpaid Holiday Pay:
65. The claimant has not adduced any evidence as to the amount or value of any alleged unpaid holiday pay. The burden of proof is on the claimant to prove her claim on the balance of probabilities, and she has failed to do this. Accordingly, this claim is dismissed.
66. ACAS Uplift:
67. The claimant seeks an uplift on her compensation pursuant to section 207A(2) of the Trade Union and Labour Relations (Consolidation) Act 1992, and we agree with her assertion that it is difficult to contemplate a dismissal which is more in breach of the ACAS Code and/or the normal standards of industrial relations. We agree that the respondent has failed to comply with a relevant Code of Practice and that that failure was unreasonable. We agree that an uplift of 25% is just and equitable in the circumstances of this case.
68. Unfair Dismissal Remedy:
69. The claimant does not seek reinstatement or re-engagement. We therefore turn to an appropriate award for compensation. At the time of her dismissal the claimant earned £412.00 per week gross, which after normal statutory deductions became £320.36 per week net. The claimant also received NEST pension payments from the respondent equivalent to £12.36 per week. Her net weekly pay was therefore £332.72.
70. The claimant's basic award is calculated as follows. She was employed for three complete years all of which were over the age of 41, and her basic award is therefore $(3 \times 1.5 \times £412.00) = £1,854.00$.
71. We now turn to the compensatory award which is calculated as follows. We first award a sum of £500 for loss of statutory rights. Following the claimant's dismissal which was communicated on 6 May 2020, she tried to obtain alternative work but because of the difficulties arising from the Covid-19 pandemic she was unable to find alternative employment. Towards the end of 2020 she decided to become a full-time carer for her disabled mother, and the claimant agrees that it is reasonable for her to seek compensation limited to the period ending on 31 December 2020. This is a period of 29 weeks at £332.72 per week net, which is a subtotal of £9,648.88. The sum of £500 for loss of statutory rights mentioned above should be added to this, which is a subtotal of £10,148.88.
72. Compensation for unfair dismissal therefore consists of the basic award of £1,854.00, and the compensatory award of £10,148.88, which comes to £12,002.88. We apply the 25% uplift to this figure (a further subtotal £3,000.72), which gives a total award for unfair dismissal in the sum of £15,003.60.
73. We consider this sum to be just and equitable.
74. The Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations 1996 ("the Recoupment Regulations") apply in this case. For the purposes of Recoupment, the Grand Total is £15,003.60; the Prescribed Element is £9,648.88; the Period of the Prescribed Element is from dismissal on 6 May 2020 to 31 December 2020; and the excess of the Grand Total over the Prescribed Element is £5,354.72.
75. Failure to Issue a Written Statement of Employment Particulars:
76. The respondent failed to issue the claimant with a written statement of the particulars of her employment, and the respondent is ordered to pay the claimant two weeks' pay in the sum of £824.00 pursuant to subsections 38(3) and 38(4)(a) of the Employment Act 2002. We do not consider it to be just and equitable to make a higher award in the sum of four weeks' pay.
77. For the purposes of Rule 62(5) of the Employment Tribunals Rules of Procedure 2013, the issues which the tribunal determined are at paragraphs 1 and 35; the findings of fact made in relation to those issues are at paragraphs 6 to 18; a concise identification of the relevant law is at paragraphs 19 to 33; how that law has been applied to those findings in order to

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decide the issues is at paragraphs 36 to 65; and how the amount of the financial award has been calculated is at paragraphs 66 to 74.

Employment Judge N J Roper
Date: 16 February 2022

Judgment sent to parties: 18 February 2022

FOR THE TRIBUNAL OFFICE